

Agricultural Marketing Service, USDA

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for new, distinct, uniform, and stable varieties of sexually reproduced or tuber propagated plants. Each certificate of plant variety protection certifies that the breeder has the right, during the term of the protection, to prevent others from selling the variety, offering it for sale, reproducing it, importing or exporting it, conditioning it, stocking it, or using it in producing a hybrid or different variety from it, as provided by the Act.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17189, Apr. 4, 1995]

DEFINITIONS

§ 97.2 Meaning of words.

Words used in the regulations in this part in the singular form will import the plural, and vice versa, as the case may demand. The definitions of terms contained in the Act shall apply to such terms when used in this part. As used throughout the regulations in this part, unless the context requires otherwise, the following terms will be construed to mean:

Abandoned application. An application which has not been pursued to completion within the time allowed by the Office or has been voluntarily abandoned.

Act. The Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

Administrator. The Administrator of the Agricultural Marketing Service of the U.S. Department of Agriculture, or any other officer or employee of the Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his or her stead.

Applicant. The person who applied for a certificate of plant variety protection.

Application. An application for plant variety protection under the Act.

Assignee. A person to whom an owner assigns his/her rights in whole or in part.

Board. The Plant Variety Protection Board appointed by the Secretary.

Certificate. A certificate of plant variety protection issued under the Act by the Office.

Certified seed. Seed which has been determined by an official seed certifying agency to conform to standards of ge-

netic purity and identity as to variety, which standards have been approved by the Secretary.

Commissioner. The Examiner in Chief of the Office.

Decision and order. Includes the Secretary's findings of fact; conclusions with respect to all material issues of fact and law, as well as the reasons or basis therefor; and order.

Examiner. An employee of the Plant Variety Protection Office who determines whether a certificate is entitled to be issued. The term shall, in all cases, include the Commissioner.

Foreign application. An application for plant variety protection filed in a foreign country.

Hearing Clerk. The Hearing Clerk, U.S. Department of Agriculture, Washington, DC.

Hearing Officer. An Administrative Law Judge, U.S. Department of Agriculture, or other officer or employee of the Department of Agriculture, duly assigned to preside at a hearing held pursuant to the rules of this part.

Office or Plant Variety Protection Office. The Plant Variety Protection Office, Science and Technology Programs, AMS, USDA.

Official Journal. The "Official Journal of the Plant Variety Protection Office."

Owner. A breeder who developed or discovered and developed a variety for which plant variety protection may be applied for under the Act, or a person to whom the rights to such variety have been assigned or transferred.

Person. An individual, partnership, corporation, association, government agency, or other business or governmental entity.

Secretary. The Secretary of Agriculture of the United States or any other officer or employee of the U.S. Department of Agriculture, to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated to act in his or her stead.

Seed certifying agency. It shall be defined as set forth in the Federal Seed Act (53 Stat. 1275).

Sale for other than seed purposes. The transfer of title to and possession of the seed by the owner to a grower or other person, for reproduction for the

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owner, for testing, or for experimental use, and not for commercial sale of the seed or the reproduced seed for planting purposes.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17189, Apr. 4, 1995; 61 FR 248, Jan. 4, 1996; 70 FR 28785, May 19, 2005]

ADMINISTRATION

§ 97.3 Plant Variety Protection Board.

(a) The Plant Variety Protection Board shall consist of 14 members appointed for a 2-year term. The Board shall be appointed every 2 years and shall consist of individuals who are experts in various areas of varietal development. The membership of the Board, which shall include farmer representation, shall be drawn approximately equally from the private or seed industry sector and from the government or public sector. No member shall be eligible to act on any matter involving any appeal or questions under section 44 of the Act, in which the member or his or her employer has a direct financial interest.

(b) The functions of the Board are to:

(1) Advise the Secretary concerning adoption of rules and regulations to facilitate the proper administration of the Act;

(2) Make advisory decisions on all appeals from the examiner or Commissioner;

(3) Advise the Secretary on the declaration of a protected variety open to use in the public interest; and

(4) Advise the Secretary on any other matters under the regulations in this part.

(c) The proceedings of the Board shall be conducted in accordance with the Federal Advisory Committee Act, Administrative Regulations of the U.S. Department of Agriculture (7 CFR part 25), and such additional operating procedures as are adopted by members of the Board.

[58 FR 42435, Aug. 9, 1993, as amended at 61 FR 248, Jan. 4, 1996]

THE APPLICATION

§ 97.5 General requirements.

(a) Protection under the Act shall be afforded only as follows:

(1) Nationals and residents of the United States shall be eligible to receive all of the protection under the Act.

(2) Nationals and residents of Member States of the International Union for the Protection of New Varieties of Plants (including states which are members of an intergovernmental organization which is a UPOV member) shall be eligible to receive the same protection under the Act as is provided to nationals of the United States.

(3) Persons who are not entitled to protection under paragraph (a)(1) or (2) of this section, and who are nationals of a foreign state which is not a member of the International Union for the Protection of New Varieties of Plants, shall be entitled to only so much of the protection provided under the Act, as is afforded by such foreign state to nationals of the United States, for the same genus and species under the laws of such foreign state in effect at the time that the application for protection under the Act is filed, except where further protection under the Act must be provided in order to avoid the violation of a treaty to which the United States is a party.

(b) Applications for certificates shall be made to the Plant Variety Protection Office. An application shall consist of:

(1) A completed application form, except that the section specifying that seed of the variety shall be sold by variety name only, as a class of certified seed, need not be completed at the time of application.

(2) A completed set of the exhibits, as specified in the application form, unless the examiner waives submission of certain exhibits as unnecessary, based on other claims and evidence presented in connection with the application.

(3) Language and legibility: (i) Applications and exhibits must be in the English language and legibly written, typed or printed.

(ii) Any interlineation, erasure, cancellation, or other alteration must be made in permanent ink before the application is signed and shall be clearly initialed and dated by the applicant to indicate knowledge of such fact at the time of signing.